

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF OREGON

3 PORTLAND DIVISION

4 AMERICAN HONDA MOTOR CO., INC.,)

5 Plaintiff,)

6 vs.)

7 ST. PAUL FIRE & MARINE INSURANCE CO. and)

8 NATIONAL UNION FIRE INSURANCE CO. OF)

9 PITTSBURGH,)

10 Defendants.)

No. 03:11-cv-00344-HU

11 ST. PAUL FIRE & MARINE INSURANCE CO.,)

12 Crossclaim Plaintiff,)

13 vs.)

14 ZURICH AMERICAN INSURANCE CO. and)

15 AMERICAN GUARANTEE AND LIABILITY)

16 INSURANCE CO.,)

17 Crossclaim Defendants¹.)

**FINDINGS AND
RECOMMENDATION ON
MOTION FOR SUBSTITUTION
AND REALIGNMENT OF
PARTIES**

18 ST. PAUL FIRE & MARINE INSURANCE CO.,)

19 Third-Party Plaintiff,)

20 vs.)

21 STELLAR STRUCTURES, LLC; CONTINENTAL)

22 CASUALTY COMPANY; VALLEY FORGE INSURANCE)

23 COMPANY; AMERICAN CASUALTY COMPANY OF)

24 READING, PENNSYLVANIA; NATIONAL FIRE)

25 INSURANCE COMPANY OF HARTFORD; and)

26 TRANSPORTATION INSURANCE COMPANY;)

27 Third-Party Defendants.)

28 ¹Both Crossclaim Defendants have been dismissed with prejudice
as primary Defendants, but remain as Crossclaim Defendants.

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Forge Insurance Company; American Casualty Company of
12 Reading, Pennsylvania; National Fire Insurance Company
of Hartford; and Transportation Insurance Company
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16 HUBEL, Magistrate Judge:

17 This case concerns which one or more of the many insurance
18 companies who are parties in the case, if any, must pay a multi-
19 million-dollar judgment obtained by the plaintiff against Opus
20 Northwest, LLC ("Opus"), in connection with damage Honda sustained
21 to its distribution facility located in Gresham, Oregon. The
22 parties are identified herein as "Honda" for American Honda Motor
23 Co., Inc.; "St. Paul" for St. Paul Fire & Marine Insurance Co.;
24 "National Union" for National Union Fire Insurance Co. of
25 Pittsburgh; and "Stellar" for Stellar Structures, LLC. Stellar,
26 Continental Casualty Company; Valley Forge Insurance Company;
27 American Casualty Company of Reading, Pennsylvania; National Fire
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1 Insurance Company of Hartford; and Transportation Insurance
2 Company; are referred to collectively as "Stellar's Insurers."

3 The case is before the court on Honda's "Motion for Substi-
4 tution and Realignment to Reflect the Real Parties in Interest."
5 Dkt. #152. Although the motion was filed on May 21, 2012,
6 consideration of the motion was deferred until after October 31,
7 2012, by order dated July 17, 2012, Dkt. #175, in light of the
8 shifting landscape of the case. The shifting of the parties'
9 relative positions now appears to have ceased, for the most part,
10 and the undersigned submits the following report and recommended
11 disposition of the motion pursuant to 28 U.S.C. § 636(b)(1)(B).

12 In the motion, Honda asks the court to direct Honda to file a
13 Second Amended Complaint that names Honda as plaintiff in its own
14 right, and as assignee and/or indemnitor of Opus Northwest, LLC
15 ("Opus"), Zurich, American Guarantee, Stellar, and Stellar's
16 Insurers, with St. Paul and National Union as the two named
17 defendants. Honda also asks the court to direct St. Paul and
18 National Union "to file their answers, affirmative defenses, and
19 counterclaims against American Honda as the real party in interest
20 (as judgment creditor, assignee, and/or indemnitor) on all claims
21 presently asserted in this coverage action." Dkt. #152, p. 4.
22 Honda asserts it is now the assignee and/or indemnitor of all
23 parties in this case except St. Paul and National Union, and it
24 argues the requested realignment of parties will "clarify,
25 simplify, and streamline" the complex web of claims asserted in the
26 case. *Id.* & Dkt. #169. Honda also asserts that substitution and
27 realignment of the parties will result in a dramatic savings in
28 terms of attorneys' fees. According to Honda, as long as its

1 indemnitees continue to be named as parties in the case, each of
2 them continues to have separate counsel monitor the case, and Honda
3 is being billed for those attorneys' time as well as its own
4 counsels' time.

5 St. Paul opposes the realignment proposed by Honda. Although
6 Honda asserts that its proposed substitution and realignment of
7 parties will not affect St. Paul's rights or remedies against any
8 party, St. Paul disagrees. St. Paul argues it has the right to
9 maintain its claims against those parties as to whom the claims are
10 directed, in those parties' own names. It asserts Honda is
11 assignee only of Opus and Zurich, whereas Honda is a voluntary
12 indemnitor of Stellar and Stellar's Insurers. Honda is the party
13 who brought this action, which St. Paul is forced to defend, and
14 St. Paul should not be prejudiced because Honda's indemnitees now
15 are uncomfortable, to some extent, with the terms of their
16 settlements with Honda. St. Paul also disagrees that the requested
17 realignment of parties would save resources, avoid confusion, avoid
18 potential conflicts of interest, and facilitate efficient
19 resolution of the claims in this action. Dkt. #162.

20 At a hearing on the motion on June 20, 2012, St. Paul
21 acknowledged that a realignment of the parties might make sense,
22 but argued it might be better to accomplish it at the pretrial
23 order stage. I find realignment of the parties as Honda requests
24 will remove multiple levels of complexity with regard to
25 identifying the parties' respective claims against one another.
26 Honda's counsel is already named as counsel of record for each of
27 its assignors and indemnitees. I further see no benefit in waiting
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1 until the pretrial order stage to accomplish the realignment. I
2 therefore recommend Honda's motion be **granted**.

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4 ***SCHEDULING ORDER***

5 These Findings and Recommendation will be referred to a
6 district judge. Objections, if any, are due by **January 25, 2013**.
7 If no objections are filed, then the Findings and Recommendations
8 will go under advisement on that date. If objections are filed,
9 then any response is due by **February 11, 2013**. By the earlier of
10 the response due date or the date a response is filed, the Findings
11 and Recommendations will go under advisement.

12 IT IS SO ORDERED.

13 Dated this 8th day of January, 2013.

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15 /s/ Dennis J. Hubel

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17 Dennis James Hubel
18 Unites States Magistrate Judge
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